TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

No. 1011.

R. B. CHAFFIN, PLAINTIFF IN ERROR,

vs.

WILLIAM TAYLOR.

IN ERROR TO THE SUPREME COURT OF APPEALS OF THE STATE OF VIRGINIA.

FILED OCTOBER 5, 1885.

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1 To the honorable judges of the Supreme Court of the United States:

Your petitioner, R. B. Chaffin, respectfully represents that he is aggrieved by a judgment pronounced against him by the supreme court of appeals for the State of Virginia, on the 11th day of September, 1885. He presents herewith a transcript of the record and prays for a reversal of the same.

R. B. CHAFFIN,
By WM. L. ROYALL,
His Att'y.

2 To the honorable judges of the supreme court of appeals for the State of Virginia:

You petitioner, R. B. Chaffin, doth respectfully represent that he is aggrieved by a judgment pronounced against him on the 15th day of May, 1885, by the circuit court of Henrico county, in a suit wherein he was plaintiff, and William Taylor was defendant. A transcript of the record of said cause is presented herewith, from which the following facts will appear:

Your petitioner tendered to the defendant, who is the treasurer of Henrico county, Virginia, in payment of his State taxes due on his property, situated in Henrico county, the State of Virginia tax-receivable coupons, which the defendant refused to receive. Thereafter the defendant levied on and siezed your petitioner's horse, and sold same to force your petitioner to pay his said taxes in another medium. Your petitioner sued him for his trespass in so doing, and the defendant pleaded the acts of the Legislature of Virginia commanding him to refuse said coupons, and to levy, notwithstanding said tender. The circuit court held said defence to be a good defence. Your petitioner appealed to the Supreme Court of the United States, which held such State laws to be unconstitutional and void, and remanded said cause to said circuit court with instructions to have the same tried by a jury. When the said cause came on to be tried the defendant offered a plea that said coupons had not
3 been verified and identified according to the provisions of the act of January 14, 1882, before said tender, and your petitioner did not prepay his said taxes before said tender in money according to the provisions of said act.

Your petitioner objected to said plea being received for the reason that the opinion and judgment of the Supreme Court of the United States precluded the defendant from making it; but the said court overruled your petitioner's objection and gave judgment against your petitioner. Your petitioner therefore prays that a writ of error may be awarded him, and that said judgment may be reviewed and reversed.

R. B. CHAFFIN,
By WM. L. ROYALL,
His Att'y.

I, William L. Royall, counsel, practicing in the supreme court of appeals of the State of Virginia, am respectfully of opinion that the

judgment complained of in the foregoing petition should be reviewed and reversed.

WM. L. ROYALL.

4 VIRGINIA:

Pleas at the court-house of the county of Henrico, before the circuit court of the said county, on Friday, the 15th day of May, one thousand eight hundred & eighty-five (1885.)

Be it remembered that heretofore, to wit, at rules held in the office of the said court on the first Monday in September, in the year 1884, being the first day of September, 1884, came the plaintiff, R. B. Chaffin, and filed his declaration against the defendant, William Taylor, who has been duly summoned to answer the action of the said plaintiff of a plea of trespass, which said declaration is in the following words and figures:

"In the Circuit Court of the County of Henrico.

"R. B. CHAFFIN *vs.* WILLIAM TAYLOR.

"R. B. Chaffin, plaintiff, complains of William Taylor, defendant, of a plea of trespass for this, to wit, that heretofore, to wit, on the — day of May, 1884, the said defendant, with force & arms, did unlawfully and against the will of the plaintiff enter upon the premises and farm of the said plaintiff, which said premises and farm are situate and being within the limits and boundaries of the county of Henrico, in the State of Virginia, and the said defendant being as aforesaid within and upon the said premises and farm he, the said defendant, with force and arms and against the will of the plaintiff, did unlawfully seize, take, and carry away one horse, the property of the plaintiff, of great value, to wit, of the value of one hundred dollars, and other wrongs and injuries to the said plaintiff, the said defendant then & there did to the damage of the plaintiff one hundred and fifty dollars, and therefore he sues.

"WM. L. ROYALL, *P. Q.*"

And the defendant not appearing, on the motion of the plaintiff it is ordered that judgment be entered for the said plaintiff against the defendant for what damages the plaintiff ought to recover, unless the defendant shall appear at the next rules and answer the plaintiff's action.

At which day, to wit, at rules held in the office of said court on the last monday in the month of September, 1884 (being the 29th day of September, 1884), the defendant still failing to appear, on the motion of the plaintiff, by his attorney, it is ordered that the conditional judgment entered in this cause at the last rules stand confirmed, and that the plaintiff's damages be ascertained by a jury at the next term.

And at another day, to wit, at a circuit court begun & held for the county of Henrico, at the court-house, on Monday, the 6th day of October, in the year 1884.

This day came the parties, by their attorneys, and thereupon the defendant, by his attorney, by leave of the court filed his
6 special plea to the plaintiff's declaration, which said plea is in the following words & figures:

"In the Circuit Court of the County of Henrico.

"WILLIAM TAYLOR *ads.* R. B. CHAFFIN.

"And the said defendant, by his attorney, comes and defends the force & injury complained of, and says that the said plaintiff ought not to have or maintain his aforesaid action against him, because he says that before and at the time when the supposed trespasses complained of in the plaintiff's declaration were supposed to have been committed the plaintiff owed taxes to the State of Virginia for the year 1883, which taxes had been lawfully assessed against said plaintiff on property owned by said plaintiff in the county of Henrico, in the State of Virginia. That the defendant is the treasurer of the said county of Henrico, duly elected and qualified, and that he is charged by the laws of the State of Virginia with the duty of collecting all taxes due the said State on property and persons lawfully assessed with taxes in said county.

"That the taxes of the plaintiff aforesaid were due and payable prior to the 1st day of December, 1883, and that by the laws of the State of Virginia it became the duty of this defendant to levy for taxes after the said first day of December, 1883.

"That the defendant has many times since the first day of December, 1883, demanded of the plaintiff payment of his said taxes due as aforesaid to said State of Virginia, but the said plaintiff
7 has always neglected and refused to pay the same, and did neglect and refuse to pay the same up to the time when the supposed trespasses were alleged to have been committed.

"That the plaintiff being so in default at the time mentioned in the declaration, the defendant, as was his duty, under the laws of Virginia, entered upon the premises of the plaintiff for the purpose of levying upon, and did levy upon, property of the plaintiff to satisfy said taxes due by the plaintiff to the State as aforesaid, and that he took and carried away the horse mentioned in the declaration, the property of the plaintiff, for the purpose of selling it, according to law, to satisfy the taxes due as aforesaid by the plaintiff.

"That the defendant used no more force than was necessary to make said levy, and he did not remain upon the plaintiff's premises longer than was necessary to make said levy, and that the defendant committed no outrage or wrong whilst upon the plaintiff's premises upon the plaintiff or his property. That the foregoing are the supposed trespasses mentioned in the plaintiff's declaration, whereof the said plaintiff hath complained against the said defendant; and this he is ready to verify.

"Wherefore he prays judgment if the said plaintiff ought to have or maintain his action aforesaid against him.

"WM. TAYLOR,
"By G. W. THOMAS, *P. D.*

"Sworn to before me, this 4th day of October, 1884.
"GEO. W. CARTER, *Clk.*"

8 And the plaintiff, by like leave of the court, filed his replication to said special plea, which said replication is in the following words & figures:

"In the Circuit Court of Henrico County.

"R. B. CHAFFIN *vs.* WM. TAYLOR.

"And the said plaintiff, as to the plea of the defendant above pleaded, says that he ought not to be barred from having and maintaining his aforesaid action thereof against the defendant by reason of anything by the defendant in that plea alleged, because he says that on many and divers occasions prior to the — day of ——, 1884, the day when the defendant unlawfully entered upon his premises and committed the wrongs and injuries complained of in the declaration, he tendered to the defendant, as treasurer and collector of taxes for the county of Henrico, in payment of his said taxes due to the State of Virginia, a coupon cut from a bond issued by the State of Virginia under authority of and by virtue of the act of the General Assembly of the State of Virginia approved March 30th, 1871 entitled 'An act to provide for the funding and payment of the public debt,' which coupon bore upon its face the contract of the State of Virginia that it should be received in payment of all taxes due to said State, and the same was overdue and past maturity, and at the same time he tendered as part of said tender to the said treasurer a sum in national bank currency; that the said coupon and said sum of national bank currency amounted
9 together to exactly the sum so due by the plaintiff for taxes as aforesaid for the year 1883.

"That he, the said plaintiff, on the — day of ——, 1884, the same being the day upon which the defendant made said unlawful entry upon the premises of the plaintiff, prior to the time when he made said entry, again tendered the said coupon and national bank currency in payment of his said taxes, and he was always ready & willing to deliver the same to the defendant in payment of his said taxes up to the moment when he made said unlawful entry; but the said defendant refused to receive said coupon and national bank currency in payment of the said taxes, notwithstanding said tender so made by the plaintiff, and he unlawfully entered upon the plaintiff's premises thereafter and committed the trespasses complained of in the declaration aforesaid, although the plaintiff was always, after said tender, ready and willing to deliver to him said coupon and currency in payment of his said taxes, and this he, the plaintiff, is ready to verify; and he prays judgment and his damages by him sustained by reason of the committing of the said trespasses, to be assessed to him.

"WM. L. ROYALL, *P. Q.*"

To which replication the defendant filed a special demurrer, which said demurrer is in the following words and figures:

"In the Circuit Court of the County of Henrico.

"WILLIAM TAYLOR *ads.* R. B. CHAFFIN.

"And the defendant says that the plaintiff's application is not sufficient in law for the following reasons: Firstly, because by an act of the General Assembly of Virginia, approved March 26, 1882, entitled 'An act to provide for the more efficient collection of the revenue to support of government, maintain the public schools, and to pay interest on the public debt,' this defendant, as treasurer of Henrico county, was and is forbidden to receive in payment of taxes due the State of Virginia anything but gold, silver, United States Treasury notes, and national bank currency; and, secondly, because the 3d section of an act of the Gen'l Assembly of Virginia, approved March 13th, 1884, entitled 'An act to amend the act approved January 26th, 1882,' entitled 'An act to provide for the more efficient collection of the revenue,' &c., forbids this action being brought or maintained in this case for want of sufficient replication in this matter, the said defendant prays judgment if the said plaintiff ought to have or maintain his aforesaid action against him.

"G. W. THOMAS, *P. D.*"

And the plaintiff joined in said demurrer, and by leave of court he filed a special joinder, assigning the reasons why said demurrer should be overruled; which said joinder is in the following words and figures:

"In the Circuit Court of the County of Henrico.

"R. B. CHAFFIN *vs.* WM. TAYLOR.

"And the plaintiff above named joins in the defendant's demurrer, and says that the same should be overruled, because he claims that the act of Assembly, approved January 26, 1882, first referred to by the defendant, is repugnant to section ten of article one of the Constitution of the United States, and because the act approved March 13th, 1884, referred to secondly by the defendant, is likewise repugnant to section 10 of article 1 of the Constitution of the United States, and is also repugnant to the fourteenth amendment of the Constitution of the United States, and is also repugnant to section 1979 of the Revised Statutes of the United States.

"WM. L. ROYALL, *P. Q.*"

And this case is submitted to the court by both plaintiff and defendant upon said declaration, plea, replication, demurrer, and joinder in demurrer for its judgment thereon.

And at another day, to wit, at a circuit court continued by adjournment, and held for the county of Henrico, at the court-house, on Saturday, the 11th day of October, in the year 1884,

This day came again the parties, by their attorneys, and the court, having maturely considered the pleadings in this cause, is of opinion

that the act of the General Assembly, approved December 26, 1882, pleaded by the defendant, is not repugnant to section ten of article one of the Constitution of the United States, and that the act of the General Assembly, approved March 13th, 1883, pleaded by the defendant, is not repugnant to section ten of article one of the Constitution of the United States, nor to the Fourteenth Amendment to the Constitution of the United States, nor to section 1979 of the Revised Statutes of the United States.

The court doth therefore sustain the defendant's demurrer to the plaintiff's replication, and doth deny and overrule the claims
12 made by the plaintiff under the Constitution of the United States, and under section 1979 of the Revised Statutes of the United States. Therefore it is considered by the court that the plaintiff take nothing by his writ, but that he be in mercy, &c., for his false clamor, and that the defendant go thereof without day and recover of the plaintiff his costs by him about his defence herein expended.

And at another day, to wit, at a circuit court continued by adjournment and held for said county of Henrico, at the court-house, on Friday, the 8th day of May, in the year 1885,

This day came again the parties, by attorneys, and a copy of the decision of the Supreme Court of the United States in this case duly certified was this day presented to and the same is ordered to be entered as the judgment and order of this court, and is in the words and figures following, to wit:

"UNITED STATES OF AMERICA, *ss:*

"The President of the United States of America to the honorable the judge of the circuit court of the county of Henrico, State
[SEAL.] of Virginia, Greeting:

"Whereas lately, in the circuit court of the county of Henrico, State of Virginia, and the supreme court of appeals of the State of Virginia, in a cause between R. B. Chaffin, plaintiff, and William Taylor, defendant, wherein the judgment of the said circuit court entered in said cause on the 11th day of October, A. D. 1884, is in the following words, viz:

13 "This day came again the parties, by their attorneys, and the court, having maturely considered the pleadings in this case, is of the opinion that the act of the General Assembly, approved December 26th, 1882, pleaded by the defendant, is not repugnant to section ten of article one of the Constitution of the United States, and that the act of the General Assembly, approved March 13th, 1883, pleaded by the defendant, is not repugnant to section ten of article one of the Constitution of the United States, nor to the Fourteenth Amendment to the Constitution of the United States, nor to section 1979 of the Revised Statutes of the United States. The court doth therefore sustain the defendant's demurrer to the plaintiff's replication, and doth deny and overrule the claims made by the plaintiff under the Constitution of the United States, and under section 1979 of the Revised Statutes of the United States.

"Therefore it is considered by the court that the plaintiff take nothing by his writ, but that he be in mercy, &c., for his false clamor, and that the defendant go thereof without day and recover of the plaintiff his costs.

"And whereas the judgment of the said supreme court of appeals, entered in said cause on the 25th day of November, A. D. 1884, is in the following words, viz:

"The petition of R. B. Chaffin for a writ of error to a judgment rendered by the circuit court of the county of Henrico on the 11th day of October, 1884, in a suit [in] which the petitioner was plaintiff and William Taylor was defendant having been maturely considered and the transcript of the record of the judgment
14 aforesaid seen and inspected, the court, being of opinion that said judgment is plainly right, doth deny the said writ, as by the inspection of the transcript of the record of the said supreme court of appeals, and said circuit court, which was brought into the Supreme Court of the United States by virtue of a writ of error agreeably to the act of Congress, in such case made and provided, fully and at large appears.

"And whereas in the present term of October, in the year of our Lord one thousand eight hundred and eighty-four, the said cause came on to be heard before the Supreme Court of the United States on the said transcript of the record, and was argued by counsel:

"On consideration whereof, it is now here ordered and adjudged by the Court that the judgments of the said supreme court of appeals, and of the circuit court of the county of Henrico, State of Virginia, in this cause be, and the same are hereby, reversed with costs; and that the said plaintiff, R. B. Chaffin, recover against the said defendant, William Taylor, sixty-two dollars and seventy cents for his costs herein expended, and have execution therefor.

"And it is further ordered that this cause be, and the same is hereby, remanded to the said circuit court of the county of Henrico, State of Virginia, with instructions to take further proceedings in accordance with law, and in conformity with the opinion of this court.

"20TH APRIL, 1885.

"And the same is hereby remanded to you, the said judge of the said circuit court of the county of Henrico, State of Virginia, in order that such execution and further proceedings may be
15 had in the said cause, in conformity to the judgment and decree of this court above stated as according to right and justice, and the Constitution and laws of the United States, ought to be had therein, the said writ of error notwithstanding.

"Witness the Honorable Morrison R. Waite, Chief Justice of said Supreme Court, the sixth day of May, in the year of our Lord one thousand eight hundred and eighty-five.

"JAMES H. McKENNEY,

"*Clerk of the Supreme Court of the United States.*"

Costs of plaintiff:

Clerk	$27 20
Printing record	15 50
Attorney	20 00
	$62 70

And now at this day, to wit, at the same circuit court continued by adjournment, and held for the county of Henrico, at the court-house, on the day and year first herein written, to wit, on Friday the 15th day of May, in the year 1885,

This day came again the parties, by their attorneys, and thereupon the defendant, by his attorney, tendered a rejoinder in writing to the plaintiff's replication to which the plaintiff, by his attorney, objected, and moved the court to reject said rejoinder, which motion the court overruled and permitted the defendant to file said rejoinder, which said rejoinder is in the following words and figures:

"In the Circuit Court of the County of Henrico.

"WM. TAYLOR *ads.* R. B. CHAFFIN.

"And the said defendant, by his attorney, as to the replication of the plaintiff, says: That the said plaintiff ought not to have
16 or maintain his aforesaid action against him, because he says that at the time the said plaintiff offered to the defendant as treasurer and collector of taxes for the county of Henrico in payment of the taxes of the said plaintiff for the year 1883 due to the State of Virginia a paper or instrument in print, writing, or engraving purporting to be a coupon detached from a bond of the Commonwealth of Virginia, issued under the act of Assembly 1871, entitled 'An act to fund the public debt,' he, the said plaintiff, demanded that the said defendant should receive the same, together with a small sum of national bank currency in full for said taxes due by the plaintiff for the year 1883, and gave him, the said plaintiff, a receipt in full discharge of said taxes, notwithstanding the act of the General Assembly, approved January 14th, 1882, which provides that, whenever any tax-payer or his agent shall tender to any person whose duty it is to collect or receive taxes, debts, or demands due the Commonweath any papers or instruments in print, writing, or engraving purporting to be coupons detached from bonds of the Commonwealth issued under the act of 1871, entitled 'An act to fund the public debt,' in payment of any such taxes, debts, and demands the person to whom such papers are tendered shall receive the same, giving the party tendering a receipt, stating that he has received the same for the purpose of identification and verification; he shall at the same time require such tax-payer to pay his taxes in coin, legal tender notes, or national bank bills, and upon pay-
17 ment give him a receipt for the same; in case of refusal to pay, the taxes due shall be collected as all other delinquent taxes are collected. The said defendant, as treasurer and tax collector for the county of Henrico, as was his duty, did, on account of

said act of January 14th, 1882, refuse to comply with the demands of the said plaintiff, but was willing and ready to receive, and is still ready to receive, the said paper or instrument in print, writing, or engraving purporting to be a coupon detached from a bond of the Commonwealth, issued under the act of 1871, entitled 'An act to fund the public debt,' and give said plaintiff a receipt for the same, for the purpose of identification and verification, at the same time receiving from the said plaintiff his taxes in coin, legal tender notes, or national bank bills, giving him a receipt for the same, as required by said act of Jan. 14th, 1882, and for the purpose herein set forth. But the said plaintiff was not willing to comply with said act of Jan. 14th, 1882, and did not comply with the same, as by law he was required to do; and he refusing to pay his taxes aforesaid the defendant as treasurer and tax collector for the county of Henrico, as was his duty under the law, proceeded to collect the taxes from the said plaintiff in the manner set forth in the plea of the defendant heretofore filed, and as provided for in said act of Jan. 14th, 1882, and this he is ready to verify.

"Wherefore he prays judgment if the said plaintiff ought to have or maintain his action aforesaid against him.

"GEO. W. THOMAS, *P. D.*"

18 To which opinion and ruling of the court the plaintiff excepted, and tendered his bill of exceptions, which was signed and sealed by the court, and made a part of the record of this case; and thereupon the plaintiff, by his attorney, filed a demurrer in writing to the defendant's rejoinder to his, the said plaintiff's, replication, which said demurrer is in the following words and figures:

"In the Circuit Court of the County of Henrico.

"R. B. CHAFFIN *vs.* WM. TAYLOR.

"And the plaintiff says that the rejoinder of the defendant to the plaintiff's replication is not sufficient in law, and the plaintiff assigns the following among reasons apparent upon the face of the record, to wit: First. That the decision, judgment, and opinion which the Supreme Court of the United States has already made, entered, and rendered in the case, precludes and forbids the defendant from making any such rejoinder; and, second, because the tenth section of article one of the Constitution of the United States makes the act of the General Assembly of the State of Virginia, approved January 14th, 1882, pleaded by the defendant, in his said rejoinder, and all other acts of said Assembly pleaded by said defendant in his said rejoinder, null and void, so far as he seeks to make it and them a defence for his said trespass; wherefore, for want of a sufficient rejoinder in this matter, the said plaintiff prays judgment, and that his
19 damages, by reason of the trespass complained of, may be assessed to him.

"WM. L. ROYALL, *P. Q.*"

In which demurrer the defendant joined, and the same was fully argued; and the court having maturely considered the matter of law arising upon the plaintiff's said demurrer to the defendant's rejoinder, is of opinion that the judgment and opinion of the Supreme Court of the United States in this cause, does not preclude and forbid the defendant from pleading the act of Assembly of January 14th, 1882, pleaded by him in his said rejoinder, and that the Constitution of the United States does not make said act of Assembly null & void as a defence to the defendant for his said alleged trespass; therefore it is considered by the court that the plaintiff's demurrer to the defendant's rejoinder be overruled, and that the plaintiff take nothing for his writ, but that for his false clamor be in mercy, &c., and that the defendant go thereof without day, and recover against the plaintiff his costs by him about his defence in this behalf expended.

The plaintiff's bill of exceptions is in the following words and figures:

"In the Circuit Court of the County of Henrico.

"R. B. CHAFFIN *vs.* WM. TAYLOR.

"Be it remembered, that this day came again the parties by their attorneys, and the defendant, by his attorney, tendered a rejoinder in writing to the plaintiff's replication, to which the plaintiff,
20 by his attorney, objected, and moved the court to reject said rejoinder, which motion the court overruled and permitted the defendant to file said rejoinder.

To which opinion and ruling of the court, the plaintiff, by counsel, excepted, and tendered this his bill of exceptions, and prays that the same may be signed and sealed by the court and made part of the record, which is accordingly done.

"B. R. WELLFORD, JR. [SEAL.]"

"Fee for transcript of the record $10.00."

20 STATE OF VIRGINIA, } *To wit:*
County of Henrico, }

I, George W. Carter, clerk of the circuit court of the said county of Henrico, in the State of Virginia, do hereby certify that the foregoing and annexed proceedings and judgment of said court in a suit lately depending therein between R. B. Chaffin, plaintiff, and William Taylor, defendant, is a true transcript from the records of the said court.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court, at the court-house, this 25th day of May, 1885, and in the 109th year of the Commonwealth.

[SEAL.] GEO. W. CARTER, *Clerk.*

21 STATE OF VIRGINIA, *County of Henrico:*

I, Beverley R. Wellford, Jr., only judge of the circuit court of the county of Henrico, in the State of Virginia, do certify that Geo. W.

Carter, whose genuine signature is subscribed to the foregoing certificate, was at the time of signing and attesting the same the clerk of the said court, and that his said attestation is in due form.

Given under my hand and seal, this twenty-fifth day of May, 1885.

B. R. WELLFORD, JR., *Judge.* [SEAL.]

22 VIRGINIA:

At a supreme court of appeals of Virginia, held at the court-house of Augusta county, at Staunton, on Friday, the 11th day of September, 1885.

R. B. CHAFFIN *vs.* WM. TAYLOR, Treasurer of Henrico County.

Upon a petition for a writ of error to the judgment of the circuit court of Henrico county, rendered on the 15th day of May, 1885, in a plea of trespass in levying upon property after a tender of coupons in payment of taxes, between said R. B. Chaffin, plaintiff, and said Wm. Taylor, treasurer, &c., defendant.

Upon consideration whereof the court is of opinion that the prayer of the petition be denied and the writ of error be not awarded.

A copy.

Teste: JAMES B. DORMAN, *Clerk.*

Fee for copy, 25c.

23 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of appeals for the State of Virginia, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said court before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between R. B. Chaffin, plaintiff, and William Taylor, defendant, wherein was drawn in question the validity of a statute of, and an authority exercised under, said State, on the ground of their being repugnant to the Constitution and laws of the United States, and the decision was in favor of such their validity, & wherein was drawn in ques-
24 tion the construction of a clause of the Constitution, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, a manifest error hath happened to the great damage of the said Chaffin, as by his complaint appears: We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the second Monday of October next, in the said Supreme

Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the twelfth day of September, in the year of our Lord one thousand eight hundred and eighty-five.

[Seal United States Circuit Court, Eastern District of Virginia.]

M. F. PLEASANTS,
Clerk of the Circuit Court of the United States for the East. Dist. of Virginia.

Allowed by—
JOHN M. HARLAN,
Associate Justice Supreme Court of the U. S.

25 VIRGINIA:

In the Clerk's Office of the Supreme Court of Appeals of Virginia, at Staunton. September 26th, 1885.

I, James B. Dorman, clerk of the supreme court of appeals of Virginia, at Staunton, do hereby certify that a copy of the within writ is on file in my office.

Given under my hand, this 26th day of September, 1885.

JAMES B. DORMAN,
Clerk Supreme Court of Appeals of Virginia, at Staunton.

[Endorsed:] Chaffin *v.* Taylor.

26 The United States of America to William Taylor, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of appeals of the State of Virginia, at Staunton, wherein R. B. Chaffin is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 12th day of September, in the year of our Lord one thousand eight hundred and eighty-five.

JOHN M. HARLAN,
Associate Justice Supreme Court of the U. S.

27 On this 19 day of September, in the year of our Lord one thousand eight hundred and eighty-five, personally appeared Wm. H. Sands, before me, the subscriber, and makes oath that he delivered a true copy of the within citation to William Taylor, treasurer of Henrico county, Virginia, on the 19th day of September, 1885.

WM. H. SANDS.

Sworn to and subscribed, the 19th day of September, A. D. 1885.

A. B. GUIGON,
Notary Public.

VIRGINIA:

In the Clerk's Office of the Supreme Court of Appeals of Virginia, at Staunton.

I, James B. Dorman, clerk of the supreme court of appeals of Virginia, at Staunton, do hereby certify that a copy of the within citation is on file in my office.

Given under my hand, this 26th day of September, 1885.

JAMES B. DORMAN,
Clerk Supreme Court of Appeals of Virginia, at Staunton.

28 Know all men by these presents that we, Wm. L. Royall and Rich'd Maury, are held and firmly bound unto William Taylor in the full and just sum of five hundred dollars, to be paid to the said Taylor, certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seal, and dated this twelfth day of September, in the year of our Lord one thousand eight hundred and eighty-five.

Whereas lately at a supreme court of appeals for the State of Virginia, in a suit depending in said court between R. B. Chaffin and William Taylor, judgment was rendered against the said R. B. Chaffin; and the said Chaffin having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the said judgment in the aforesaid suit, and a citation directed to the said William Taylor citing and admonishing him to be and appear at a Supreme Court of the United States to be holden at Washington, the second Monday of October next:

Now the condition of the above obligation is such that if the said Chaffin shall prosecute his writ of error to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else, to remain in full force and virtue.

Sealed and delivered in presence of—

WILLIAM L. ROYALL. [SEAL.]
RICH'D W. MAURY. [SEAL.]

Approved by—

JOHN M. HARLAN,
Associate Justice of the Supreme Court of the U. S.

29 VIRGINIA:

In the Clerk's Office of the Supreme Court of Appeals of the State Virginia, at Staunton.

I, James B. Dorman, clerk of the supreme court of appeals of Vir-

ginia, do hereby certify that the bond of which the within is a copy is on file in my office.

Given under my hand, this 26th day of September, 1885.

JAMES B. DORMAN,
Clerk Supreme Court of Appeals, at Staunton.

30 *Assignment of Error.*

CHAFFIN *vs.* TAYLOR.

The plaintiff in error assigns for error the action of the supreme court of appeals of the State of Virginia in refusing him a writ of error to the judgment of the circuit court of Henrico county, and refusing to reverse the same, and prays a reversal of same.

WM. L. ROYALL,
For Pl'ff in Error.

31 STATE OF VIRGINIA:

Clerk's Office, Supreme Court of Appeals of the State of Virginia, at Staunton.

I, James B. Dorman, clerk of the supreme court of appeals of the State of Virginia, at Staunton, in obedience to the mandate of a writ of error awarded by the Honorable Morrison R. Waite, Chief Justice of the United States, dated the 12th day of September, 1885, do hereby certify that the foregoing manuscript contains a true transcript of the record in the case of R. B. Chaffin, appellant, against William Taylor, appellee, as the same remains on file in the clerk's office of the said supreme court of appeals.

I further certify that the supreme court of appeals of Virginia is the highest court of law or equity in the State of Virginia in which a decision can be had.

In testimony whereof I have hereunto subscribed my name as clerk of the said supreme court of appeals of Virginia, at Staunton (there being no official seal of said court at its place of session here), this 26th day of September, 1885.

JAMES B. DORMAN,
Clerk of Sup. Ct. of Appeals of Va., at Staunton.

I herewith return the original writ of error awarded in this cause, the citation with service thereon endorsed, and a copy of the appeal bond on file in my office.

JAMES B. DORMAN, *Clerk.*

Clerk's fees for record, certificates, postage, &c., $14.61.
Paid.

32 STATE OF VIRGINIA, *City of Richmond,* } *To wit:*

I, George K. Taylor, clerk of the supreme court of appeals of Virginia, at its place of session at Richmond, do hereby certify that

James B. Dorman, Esquire, is the clerk of the said court at its place of session, at Staunton, and that his signature to the foregoing certificate is genuine.

In testimony whereof I hereto set my hand and annex the seal of said court, this 29th day of September, 1885.

[Seal Supreme Court of Appeals of Virginia, Richmond.]

GEO. K. TAYLOR,
Clerk Supreme Court of Appeals at Richmond.

Endorsed on cover: Virginia supreme court of appeals. No. 1011. R. B. Chaffin, plaintiff in error, *vs.* William Taylor. Filed October 5, 1885.

Supreme Court of the United States,

OCTOBER TERM, 1885.

No. 1011.

R. B. CHAFFIN,
Plaintiff in Error,

AGAINST

WILLIAM TAYLOR.

IN ERROR TO THE SUPREME COURT OF APPEALS OF THE STATE OF VIRGINIA.

STATEMENT.

This case returns to this Court after having been here and having been decided at the last term (*114 U. S., 309*).

The case, as it there appeared, was an action in trespass *de bonis asportatis*, brought by the plaintiff in error in the Circuit Court for Henrico County, Virginia, for the recovery of $150 damages for unlawfully seizing and carrying away property of the plaintiff in error to the value of $100, in satisfaction of taxes, after tender of tax-receivable coupons therefor.

To the declaration the defendant in error pleaded in justification his duty as treasurer to collect taxes.

To this plea the plaintiff replied a tender of tax-receivable coupons.

To this replication the defendant filed a special demurrer, setting up the acts of Virginia which forbade him to receive coupons, and forbade an action of trespass in such case.

The plaintiff joined in this demurrer, asserting that the acts last referred to were void.

Judgment was rendered on the demurrer for the defendant.

A writ of error to this judgment, applied for in the Court of Appeals of the State, was thereupon denied, and a writ of error to the latter judgment was prosecuted in this Court.

This Court thus decides the case:

"The merits of the case are disposed of by the opinion in *Poindexter vs. Greenhow*, in which case it was decided that the Act of January 26, 1882, and the Act of March 13th, 1884, were unconstitional, and therefore null and void.

"It is not denied that, but for these acts, the action of trespass would lie in such a case under the laws of Virginia, and as the acts relied on by the defendant must be treated as ineffectual for every purpose, they do not work a repeal of the previously existing law." (*p.* 310).

And thereupon it was decreed:

"That the judgment of the Supreme Court of Appeals is accordingly reversed, and the cause is remanded to that Court, with directions to take further proceedings, in accordance with law, and in conformity with this opinion" (*p.* 310).

The case being thus remanded, upon the presentation of the mandate of this Court, the defendant appeared in the Court below and tendered a rejoinder to the replication of the plaintiff, filed before the case reached this Court, as reported in 114 U. S., 309.

It is well to remember that the defendant had demurred to this replication, and the plaintiff had joined in the demurrer.

The judgment of the Court below on this demurrer having been reversed, the Court below permitted the defendant, not to answer, but *to plead again by a rejoinder.*

The original plea of the defendant set up that the plaintiff owed the taxes in question and refused to pay them, and that by the laws of the State the defendant was bound to collect said taxes.

The plea put in issue the existence and validity of all Acts of the State of Virginia, which rendered the tender of coupons for taxes, less than a payment, or, which warranted the levy set out in the declaration, and under it the defendant could have set up any and all acts which warranted him in treating the taxes of plaintiff as unpaid when the levy was made.

The plaintiff's replication sets up in terms the tender of coupons, and the validity of such tender *as a payment.*

The special demurrer to this replication of the defendant set up the Act of January 26th, 1882, and the 3d section of the Act of March 13th, 1884.

This demurrer being overruled by the judgment of this Court, the usual, reasonable, regular course of procedure in the Court below was to give judgment upon the declaration, plea and replication.

Here the case of *Hitchcock vs. Galveston*, 3 Woods, 273, is in point.

This case was a suit brought in the Circuit Court of the United States by Hitchcock to recover for work done for defendant as a corporation—first reported in *2 Woods*, 272. The defendant demurred, and the demurrers were sustained by the Court below.

The cause then went to this Court—*Hitchcock vs. Galveston*, 96 U. S., 341—where the judgment below was reversed and "the record remitted with instructions to give judgment on the demurrer against the defendant" (*p.* 341).

On the return of the case to the Court below, the defendant filed other demurrers setting up new grounds of demurrer, and plaintiff moved to strike them out. The opinion upon the decision of this motion was made by BRADLEY, Circuit Judge. He says:

"Some points raised by the demurrers to the petition are not decided by the judgment of the Supreme Court." * * *

These points are still open for discussion, although it may be contended that they are inferentially decided by the judgment of the Supreme Court. I do not think that the defendants should be allowed to file any further demurrers to the petition. They had already demurred and answered three times before the case was taken to the Supreme Court. I think it would be an abuse of the right of amendment to allow any further demurrers to be filed. In the first place, it would be out of the order of pleading, inasmuch as a full answer had already been made to the facts; and, in the second place, it would be an abuse of the manner of pleading calculated to draw after it very inconvenient consequences. After the parties have gone to the highest Court with the validity of the petition, the Court should examine with much jealousy any attempts to change the pleadings in the case. It would encourage speculation upon the opinion of the Supreme Court. *There ought, some time or other, to be an end of raising legal objections.* I think that

end properly came in this case when the cause went to the Supreme Court. I have no doubt that it will be found that every material point of defense can be presented on the trial of the cause under the points which have been raised.

"An order will be made to strike out all demurrers filed to the petition since the cause has been remanded from the Supreme Court" (*pp.* 274, 275).

In the present case the defendant had been allowed his demurrer, in which he set up certain acts of the State in his defense.

His present rejoinder merely, at best, sets up another act—the Act of January 14, 1882—which, it was claimed, warranted the refusal of the collector to receive coupons, and thus destroyed the cause of action of the plaintiff in error.

But this Act of January 14, 1882, was considered in *Poindexter vs. Greenhow*, and held not to forbid the suit of the taxpayer in trespass, after tender of coupons.

In that case the Court says, *p.* 304:

"The acts of Assembly in question"—which included the Act of January 14, 1882—"must be taken together, as one is but an amendment of the other. *The scheme of the whole is indivisible.* It cannot be separated into parts. It must stand or fall together. *The substantive part of it, which forbids the tax collector to receive coupons in payment of taxes, as we have already declared, as, indeed, on all sides is admitted, cannot stand,* because it is not consistent with the Constitution."

By his former demurrer, therefore, the defendant had had *the full benefit of the defense that any or all acts of Virginia forbade him to receive coupons for taxes.*

As a matter of pleading merely, he was not entitled to be heard further by such a defense.

Not only was this so, as a matter of pleading, but it was so by force of the express mandate of this Court.

The mandate of this Court directed proceedings "according to law" and "in conformity with this opinion."

"According to law," required that judgment should go on *the pleadings as they then stood.*

"In conformity with this opinion," required that a judgment should be rendered in favor of the plaintiff as to the rights and demands set forth in his declaration, to wit: *the right to damages in trespass against the tax collector for levy after tender of coupons.*

But if the Court below did not err in allowing the defendant's rejoinder to be filed and considered—which in another proceeding we have held to be a wanton and plain disregard of the mandate of this Court—it erred in giving judgment for the defendant after the filing of said rejoinder.

This rejoinder puts forward specially the Act of January 14, 1882, which directs the tax collector upon tender of coupons, to receive them and give a receipt therefor to the effect that he has received them for identification and verification, but shall thereupon require the taxpayer to pay his taxes in current funds, all of which, he avers, he was and is ready to do, but that the plaintiff refused to comply with said act.

In *Antoni vs. Greenhow*, 107 U. S., 769, the Act of January 14, 1882, was considered, and as providing a substitute for the writ of *mandamus*, existing when the bonds of 1871 were issued, was held to be not unconstitutional.

But in *Poindexter vs. Greenhow*, 114 U. S., 269, which was in all respects *a like case* with the present, it was held that a suit by the taxpayer would lie against the collector for damages for a levy made after tender of coupons for taxes; that a tender of coupons was a payment of taxes in such a sense and with such an effect as to deprive the tax collector of any lawful authority to levy for such taxes thereafter, and to leave him an individual personal trespasser, *all State acts of legislation to the contrary notwithstanding.*

It is not necessary, therefore, to discuss this case further. It is controlled absolutely by *Poindexter vs. Greenhow*, as it was when it was before this Court at its last term.

D. K. Chamberlain,
Of Counsel.